

TESTIMONY OF JEFF GENZER  
GENERAL COUNSEL  
**NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS**

BEFORE THE  
ENERGY AND ENVIRONMENT SUBCOMMITTEE  
HOUSE COMMITTEE ON ENERGY AND COMMERCE

REGARDING THE  
“AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009”  
  
ENERGY EFFICIENCY PROVISIONS

APRIL 24, 2009

Mr. Chairman and members of the Subcommittee, my name is Jeff Genzer and I am counsel to the National Association of State Energy Officials (NASEO). NASEO represents the energy offices from the states, territories and Washington, D.C. NASEO members operate energy efficiency and renewable energy programs and advise their Governors and work with their state executive branch agencies on energy matters. I have been NASEO counsel since the organization was formed in 1986.

Today I want to focus my attention on the energy efficiency provisions contained in Title II of the American Clean Energy and Security Act of 2009, and especially the buildings energy efficiency provisions. The buildings energy efficiency provisions of this bill are a strong step in the right direction. In the buildings sector, which accounts for such a large percentage of our total energy use in the United States (approximately 40%), there is an enormous amount of savings yet to be tapped. Our effort must focus not only on new buildings which can be made much more energy efficient, but also on our existing building stock. New buildings are a small percentage of all buildings, but by the year 2030 buildings constructed between now and then could account for up to 40% of the existing building stock. This legislation must provide incentives to states, local governments, building owners, developers and others to improve building energy efficiency. Green building is a growing way to drive energy efficiency. A major new study finds that a 34% improvement in energy efficiency could be achieved with only 2% cost premiums. These market segments must see a significant economic benefit in order to reduce energy use and carbon footprints and to satisfy legislative goals. There are significant benefits and relatively small costs to making our buildings energy efficient. The resources allocated to advancing appropriately ambitious reductions in building sector energy use must be proportional to the large energy consumption (and roughly equivalent carbon footprint) of the building sector. This is a national security issue and an energy and environmental policy issue. Reasonable reductions in CO2 production cannot be achieved without substantial contributions from making our buildings more energy efficient.

In addition, on behalf of all the states, I want to personally thank Chairman Markey and full Committee Chairman Waxman, and their respective staffs, for their aggressive work from November until the passage of the American Recovery and Reinvestment Act of 2009, to include key energy efficiency measures in the package. The key provisions from the state perspective regarding energy efficiency included \$3.1 billion for the State Energy Program, \$5 billion for the Weatherization Assistance Program, \$3.2 billion for the Energy Efficiency and Conservation Block Grant and \$300 million for the Energy Star appliance rebates program. We are moving quickly to get plans into place to spend this money quickly and effectively.

Let me summarize our position on the measures contained in this bill:

**1) Section 201 – Building Energy Codes:** NASEO supports specific increases for energy efficiency in building codes, but the provision in the draft bill is in need of certain

improvements. There should be specific adoption of a federal building energy efficiency code for residential energy efficiency, which is the so-called “30% Solution” (also known as EC-14), which provides a 30% improvement in residential energy efficiency over the 2006 International Energy Conservation Code (“IECC”). Today’s energy needs are so pressing that this should be enacted by federal law and should be effective on January 1, 2010. There is no reason for any more delay. With respect to new commercial building energy efficiency standards, the American Society of Heating, Refrigeration, and Air Conditioning Engineers (“ASHRAE”) should be given an opportunity to issue a 30% upgraded standard no later than June 1, 2010. ASHRAE’s Board of Directors set a goal of improving the energy efficiency of their standard by 30% for the 2010 edition and they are making progress towards these goals. If they fail, the Secretary of Energy should issue this 30% upgrade no later than September 1, 2010, to be effective on January 1, 2011 (30% higher than ASHRAE Standard 90.1-2004). States should be required to conduct training, enforcement and compliance (along with local governments), and 90% compliance should be achieved within 8 years. This compliance target should be required only if adequate federal funds are authorized and actually appropriated for each year of the 8-year period. Appropriated funds should generally be split 50/50 between the state and local governments. By “adequate funds”, I mean an appropriation of as much as \$1 billion dollars per year to allow state and local agencies to staff-up and train their staff to carry out these critical energy inspections of new buildings. If states fail to enforce the code and standard, then the federal government can step in and conduct federal compliance, training and enforcement (similar to the approach of the Safe Drinking Water Act or the Clean Air Act). A 50% energy efficiency upgrade for both the residential code and the commercial standard should be effective on January 1, 2015 and should be issued no later than January 1, 2011 for the residential code and October 1, 2011 for the commercial building standard. Again, this should be a specific mandatory federal residential energy efficiency building code. ASHRAE should be given the opportunity to put the commercial building energy efficiency standard in place by the dates noted herein, and if they fail, it should be imposed as a matter of federal law. States should be permitted to enact codes and standards equivalent to or higher than the federal code and standard. California’s Title 24 should be specifically grandfathered, since it is equivalent to or greater than the 30% upgrades proposed here. Strong building energy efficiency codes are part of a broader effort which should emphasize good design, good equipment and good operational measures.

The changes suggested in this Section are significant but are absolutely critical to the future of our nation. We can no longer sit idly by and allow energy waste in buildings to occur. There is no better time than now to begin constructing new buildings that are designed to be truly energy efficient, despite the current economic crisis. We cannot continue to avoid the hard decisions.

**2) Section 202 – Retrofit for Energy and Environmental Performance Program (REEP):** This provision, primarily sponsored by Representative Welch (H.R. 1778), should be enacted. The building energy efficiency retrofit program has been recognized as effective by a number of energy efficiency, building and real estate organizations and, if funded, would be a welcome addition to promote energy efficiency in residential,

commercial and public buildings. However, an authorization without appropriations is a hollow action. In the event Congress passes a climate change bill, specific funding should be provided for these energy efficiency measures. When developing allocation methodologies for energy efficiency funding, strong consideration should be given to the 40% energy load of the building sector. The funding would be provided through the State Energy Program (SEP), which is the most flexible and appropriate vehicle available for energy efficiency funding and is an excellent example of a federal-state partnership in the energy area. Congress recognized this with the recent enactment of the stimulus funds, which directed \$3.1 billion through SEP. The Administrator of EPA and the Secretary of Energy would establish basic guidelines then the states would directly operate these energy efficiency programs or work with intermediaries to implement these activities. On the residential side, this language will expand on the progress made through such entities as RESNET and the Home Energy Rating System, Building Performance Institute certification, the work of energy efficient building contractors (Energy First) and Home Performance with Energy Star. With respect to commercial buildings, the program could provide no-cost/low cost audits and then increasing amounts of funding depending on the level of demonstrated energy use reduction (ranging from \$0.15/sq.ft to \$2.50/sq.ft). The state energy offices are always encouraging stronger measured energy performance. As legislation moves forward we want to encourage comprehensive energy efficiency measures. We want to avoid “cream-skimming.” In both the residential and commercial arenas there should be enough flexibility to permit financial incentives, loan guarantees and credit enhancements.

**3) Section 203 – Energy Efficient Manufactured Homes:** This proposal, introduced originally by Congressman Baron Hill of Indiana, would create a rebate program for energy efficient manufactured homes for low-income Americans. Up to 50% of the housing in rural America is manufactured homes. They generally are terrible energy wasters. This proposal would specifically fund rebates up to \$7,500 for replacement by homeowners of pre-1976 manufactured housing with Energy Star manufactured housing. There are over 2 million of these homes still in use in the United States. The lower-income families that live in these homes are being saddled with higher energy bills because of the extremely low energy efficiency of these units. The present manufactured housing energy efficiency standards issued by HUD are inadequate, but these standards did not even exist before 1976. This is an important measure to help lower-income Americans; especially families living in rural America. The state energy offices would operate these programs in conjunction with state housing finance agencies. Energy efficient design is even more critical for all low-income housing. There are good models that have been initiated in Maine and New Hampshire.

**4) Section 204 – Building Energy Performance Labeling Program:** This proposed building energy performance labeling program is very positive and can help increase the efficiency of both residential and commercial buildings over the long term by leveraging real estate market forces in response to better information available to both buyers and sellers. In order to be effective, improvements will be required in the Commercial Buildings Energy Consumption Survey (CBECS) and the Residential Energy Consumption Survey (RECS), in terms of quality, frequency and methodology. This will

require additional resources for the Energy Information Administration, consistent with Section 805 of the Energy Independence and Security Act of 2007. Section 204(c) (3) (c) (page 199, lines 9-15 of the draft bill) should be modified to require consultation with state energy offices in the development of the data assessments. This provision requires the development of a model building energy performance label, which could be utilized as appropriate, including, but not limited to, when an audit is conducted, a retrofit, final inspection, sale, recordation of a lien or change in ownership. Funds would be provided to states to implement these provisions. Section 204(j) (page 209, lines 8-15 of the draft bill) should be modified to require consultation involving public outreach with the state energy offices.

**5) Sections 211-215 – Lighting and Appliance Energy Efficiency Programs:** These changes for the lighting and appliance energy efficiency programs are positive and should be adopted. State energy offices spend a great deal of time promoting the use of Energy Star products to the public at large. Andrew Delaski, Executive Director of the Appliance Standards Awareness Project, will be addressing these provisions in greater detail. We want to associate ourselves with Andrew's remarks. His testimony regarding multiple metrics (Section 213(a)), state building codes (Section 213(j)), DOE data collection (Section 213(e)), removal of the "Catch-22" from the state waiver petition process (Section 213(g)) and state authority to seek injunctive relief for enforcement (Section 213(i)), are all especially crucial. Andrew is a real asset in this area and the states rely upon his expertise. Steve Nadel, Executive Director of the American Council for an Energy Efficient Economy, has worked very hard to try to develop consensus provisions with the industry and Committee staff, and Steve's efforts should be applauded. Section 213(j) (pages 252-255 of the draft bill) must be reviewed to ensure that these provisions are consistent with our proposed modifications to Section 201 of the bill regarding federal energy efficient building codes and standards. This provision is a necessary complement to the building codes provision in order to allow states to move forward on a more robust code that achieves real savings from lighting and equipment. It must be modified to permit state action. Section 214 ("Best in Class Appliances Deployment Program") would provide bonuses to retailers for selling high energy efficiency appliances. This program makes sense and it should be seen as a complement to the Energy Star appliance rebates program funded with \$300 million in the stimulus package. Section 214(c) would provide bounties for replacement of low-efficiency products and is similar to a program that the New York State Energy Research and Development Authority established a number of years ago in New York City for high efficiency air conditioning. In Section 215 we recommend that the payback period not be restricted to 3-5 years (page 267, line 24). It makes sense to allow flexibility for a longer payback period.

**6) Section 231 – Energy Efficiency Resource Standard:** While all state energy offices do not support an Energy Efficiency Resource standard, the majority of state energy offices support this program. It would permit adoption of less expensive energy efficiency measures and would attempt to bring the entire country further along in promoting energy efficiency. Section 231(h) (page 309-310 of the draft bill) provides for the opportunity for state implementation, which should be preserved. In general, states

should be permitted to have an equivalent program, or a stronger program. States that have state-run or third-party administered programs rather than utility programs, should be accommodated.

In addition to the provisions in Title II of the draft bill, NASEO would like to take the opportunity to comment on Section 131 of Title I of the draft bill:

**7) Section 131 – State Energy and Environment Development Funds (SEED):** The SEED fund would permit states to allocate resources from a variety of sources for clean energy programs, energy efficiency and climate change initiatives. Subsection (e)(2)(B) specifically preserves the statutory allocation of funds for such uses as the Low-Income Weatherization Assistance Program and the Low-Income Home Energy Assistance Program, so that the low-income population is not negatively impacted. We would suggest that the 5% administrative cost limitation be raised to 10% in Subsection (e) (2) (C) (iv) (page 86, line 24). State energy offices not only work to deploy commercially available clean energy and energy efficiency technology, but also to accelerate the introduction of emerging technologies. This is a key part of the states economic development efforts. Flexibility should be provided through the SEED fund to permit use of these fund for technology advancement.

## **CONCLUSION**

On behalf of NASEO, we are pleased to support these important energy efficiency provisions of the draft legislation. We again caution that unless the implementation of the “carrots and sticks” we endorse here are fully funded the results will fall short. We look forward to continuing to work with the Committee, Subcommittee and the extremely able staff as you formulate final legislation.

We are prepared to answer any questions you might have.